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No. 94-480

In The

Supreme Court of the United States

October Term, 1994

TIMBERLANE REGIONAL SCHOOL DISTRICT,

Petitioner,

v.

KEVIN W. MURPHY,
by and through his legal guardians,
KEVIN C. AND JANICE MURPHY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENT'S MEMORANDUM IN OPPOSITION

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QUESTION PRESENTED

The Court of Appeals for the First Circuit held in this case that the Individuals with Disabilities Education Act (IDEA or Act), 20 U.S.C. sec. 1400 *et seq.*, imposes upon school districts an affirmative obligation to protect a child's right to a free and appropriate education. It held that if a school district abdicates its responsibilities under the Act such that a child is denied a free and appropriate education the school district is liable. And it held that compensatory education is an appropriate remedy for a deprivation of educational services under the Act.

The Petitioner does not challenge the above noted rulings of the Court of Appeals. It has asked this Court to issue a writ of certiorari on the narrow issue of whether the Court of Appeals borrowed the appropriate New Hampshire statute of limitations in assessing the timeliness of Respondent's request for an administrative due process hearing under the IDEA. Respondent submits that the petition raises the following question:

> Whether the determination by the Court of Appeals to apply New Hampshire's six year statute of limitations for personal actions rather than its four year statute of limitations for actions against local governmental units for bodily injury, personal injury or property damage (a) raises an important question of federal law or (b) creates a conflict between a decision of this Court or of another circuit court of appeals?

TABLE OF CONTENTS

Page

Question Presented i

Table of Authorities iii

Statement of the Case 2

A. The Statutory Framework 3

B. The Facts 5

C. The Proceedings Below 10

Reasons for Denying Writ 11

I. The Petition Does Not Raise an Important, Unsettled Issue of Federal Law 12

II. There Are No Conflicts Which Warrant the Granting of the Petition 16

Conclusion 19

TABLE OF AUTHORITIES

Page

CASES

Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982) 3, 18

Campbell v. Haverill, 155 U.S. 610 (1895) 15

Cannata v. Deerfield, 566 A.2d 162 (N.H. 1989) 15

David D. v. Dartmouth School Committee, 775 F.2d 411 (1st Cir. 1985), *cert. denied*, 475 U.S. 1140 (1986) 4

Department of Education v. Carl D., 695 F.2d 1154 (9th Cir. 1983) 18

DelCostello v. International Board of Teamsters, 462 U.S. 151 (1983) 13

Dow v. United Broth. of Carpenters, 1 F.3d 56 (1st Cir. 1993) 8

Florence County School District v. Carter, 114 S.Ct. 361 (1993) 17

Janzen v. Knox County Board of Education, 790 F.2d 484 (6th Cir. 1986) 13, 17

Jefferson County Board of Education v. Breen, 853 F.2d 853 (11th Cir. 1988) 17

Murphy v. Timberlane Regional School District, 22 F.3d 1186 (1st Cir. 1994) ..... *passim*

Murphy v. Timberlane Regional School District, 819 F.Supp. 1127 (D.N.H. 1993) 11, 13

Murphy v. Timberlane Regional School District, 973 F.2d 13 (1st Cir. 1992) 7, 11

Smith v. Robinson, 468 U.S. 992 (1984) 4, 17

TABLE OF AUTHORITIES – Continued

Page

Town of Burlington v. Department of Education, 736 F.2d 773 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985) 4

Wilson v. Garcia, 471 U.S. 261 (1985) 12, 17

STATUTES AND RULES

20 U.S.C. sec. 1400 2

20 U.S.C. sec. 1400(b)(8) 3

20 U.S.C. sec. 1400(b)(9) 3

20 U.S.C. sec. 1412(a)(i) 3

20 U.S.C. sec. 1414(b)(2)(A) 4

34 C.F.R. sec. 300.194 4

34 C.F.R. sec. 500.504(b)(2) 4

34 C.F.R. sec. 500.504(c) 5

N.H. Rev. Stat. Ann. 186-C:16 4

N.H. Rev. Stat. Ann. 186-C:16-b 16

N.H. Rev. Stat. Ann. 507-B:7 15

N.H. Rev. Stat. Ann. 508:4 ..... 10, 15

N.H. Code Admin. R. Ed. 1125 9

N.H. Code Admin. R. Ed. 1125.01(b)(3)-b. 4, 5, 13

1986 N.H. Laws 227:12 15

MISCELLANEOUS

H.R. Rep. No. 94-332 (1975) 3

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RESPONDENT'S MEMORANDUM IN OPPOSITION

Respondent Kevin W. Murphy respectfully requests that this Court deny the writ of certiorari seeking review of the opinion and order of the United States Court of Appeals for the First Circuit filed by the Petitioner, Timberlane Regional School District. The opinion and order are reported at 22 F.3d 1186 (1994).[1]

[1] The Opinion of the Court of Appeals is reprinted in the Appendix to Petitioner's Petition for Writ of Certiorari (hereinafter "PA") at PA 67.

STATEMENT OF THE CASE

The respondent, Kevin W. Murphy (Kevin), suffers from multiple disabilities, including cerebral palsy, spastic paraplegia, cortical blindness and mild mental retardation. As a result of those disabilities, Kevin requires special education and related services, as defined by the Individuals with Disabilities Education Act (IDEA or Act), 20 U.S.C. sec. 1400 *et seq.* The Petitioner, Timberlane Regional School District ("School District"), is the local educational agency which was responsible for providing Kevin with a free and appropriate education during the period of his entitlement. For two years, from December of 1981 until January of 1984, the Petitioner failed to comply with the mandate of the IDEA and did not provide any educational or special educational services to Kevin. The Court of Appeals for the First Circuit held that the School District's abdication of its responsibilities violated Kevin's rights under the Act and entitled him to an award of compensatory education. The Petitioner has not challenged its liability under the Act. Nor has it challenged the appropriateness of the award of compensatory education. The School District contends only that the Court of Appeals erred in applying a six year New Hampshire statute of limitations for personal actions rather than a four year statute of limitations for claims of bodily injury, personal injury or property damage against governmental units. The Petitioner asks this Court to review the choice of a local limitations period.

A. The Statutory Framework

Congress enacted the IDEA in response to its finding that "a majority of handicapped children in the United States 'were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to "drop out." ' " *Board of Education v. Rowley*, 458 U.S. 176, 179 (1982) (*quoting* H.R. Rep. No. 94-332, p. 2 (1975)). Congress found that "[s]tate and local educational agencies have a *responsibility* to provide education for all children with disabilities," 20 U.S.C. sec. 1400(b)(8) (emphasis added). It enacted the IDEA to compel states and local educational agencies to meet their obligations.

The IDEA conditions federal funding to the states upon the fulfillment of specified "eligibility requirements" designed to ensure "full educational opportunity to all children with disabilities." 20 U.S.C. sec. 1412(a)(i) (PA 93). Under the statute, every state is required to implement a detailed plan to ensure broad substantive and procedural rights to children with disabilities and their parents. *See Rowley*, 458 U.S. at 183 (statutory framework conditions receipt of federal funding upon each state's compliance with "significant requirements" intended to assure all handicapped children the right to a free appropriate public education). Congress emphasized that the IDEA is not merely a funding statute; it establishes an absolute duty to educate all children with disabilities, *id.*, so as to assure the equal protection of the law. 20 U.S.C. sec. 1400(b)(9).[2]

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[2] Congress enacted the IDEA based upon its powers under the spending clause *and* the enforcement powers of the fourteenth amendment to enact the IDEA. *See Rowley*, 458 U.S. at 190

New Hampshire has promulgated rules and regulations pursuant to the IDEA and state law to enforce the guarantee of equal educational opportunity for all educationally handicapped children. *See* N.H. R.S.A. 186-C:16 (PA 101). *See also Town of Burlington v. Dept. of Educ.*, 736 F.2d 773, 785 (1st Cir. 1984) (state rules provide "the machinery necessary to effectuate the guarantees provided by the federal Act on a daily basis."), *aff'd*, 471 U.S. 359 (1985). Those rules are incorporated by reference into the IDEA such that the violation of a state standard constitutes a violation of the IDEA. *Id.* at 789 ("We hold, therefore, that the Act incorporates by reference state standards, be they substantive or procedural, that exceed the federal basic floor of meaningful, beneficial educational opportunity.") *See also* 20 U.S.C. sec. 1414(b)(2)(A); *and* 34 C.F.R. sec. 300.194 (state must withhold funds from a local school district if district fails to comply with *either* federal *or* state requirements). It is the school district's refusal to comply with one of those state rules, Rule Ed. 1125.01(b)(3)-b, which lies at the heart of Kevin's case.[3]

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n.11, 204 n.26; *Smith v. Robinson*, 468 U.S. 992, 1010 (1984); *and David D. v. Dartmouth School Committee*, 775 F.2d 411, 421 n.7 (1st Cir. 1985), *cert. denied*, 475 U.S. 1140 (1986).

[3] New Hampshire Administrative Rule Ed. 1125.01(b)(3)-b requires all school districts to obtain the written consent of a student's parents prior to any change in a child's special education classification, program, or placement, and it mandates that the school district resort to an impartial due process hearing if consent is withheld. The rule comports with federal law which establishes procedures for a school district to override a parental refusal of consent, 34 C.F.R. sec. 504(c) (PA 97), and which prohibits a school district from asserting lack of consent as an

B. The Facts

Two findings by the lower courts render this case unique. First, the courts found that Kevin suffered a total deprivation of educational services for a two-year period. Such a total deprivation contrasts with disputes over the adequacy or appropriateness of contested services. PA 83 ("The present dispute involves a *total* denial of all special education services for an extended period of time, not merely a challenge to the *appropriateness* of special education services provided years earlier.") (emphasis in original). Second, the courts found that the Timberlane Regional School District refused repeatedly to comply with its clearly stated procedural obligations under the IDEA.

The Court of Appeals summarized the facts of the case as follows:

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excuse for the failure to provide a child with a free and appropriate education. 34 C.F.R. sec. 504(b) (PA 97).

The New Hampshire regulation at issue in this case provides, in relevant part:

> If the parents(s) inform the district of their disagreement, or if they fail to make a decision within the specified time frame, it shall be interpreted as disagreement with the decision or action proposed by the local school district's Special Education Evaluation/Placement Team. If the Local Educational Agency feels its action or decision should, in the best interests of the student, be implemented, the Local Educational Agency *shall* initiate its right of due process . . . to obtain the authority to implement its decision.

N.H. Code Admin. R. Ed. 1125.01(b)(3)-b (PA 105-108) (emphasis added).

After incurring an accident-induced disability at an early age, Kevin was determined a disabled individual entitled to special educational services under the IDEA. Several years later, the Murphy family moved to Plaistow, New Hampshire, which is within the Timberlane Regional School District. In September 1981, Timberlane placed Kevin in a special educational program at Charlotte Avenue School, a private elementary school in Nashua, New Hampshire. Although Kevin's parents originally agreed to this placement, they soon expressed concerns to his teacher and to Timberlane's special education administration that Kevin was regressing academically. In December 1981, after Kevin suffered a seizure at home, his parents decided not to return him to school. Kevin received no educational services from Timberlane between January 1982 and January 1984, the two-year period to which the compensatory education claim at issue in this case relates. Finally, in January 1984, after a great many meetings and an abortive truancy proceeding against Kevin's father, the parties came to an agreement on Kevin's placement at Pinkerton High School, where he remained through the 1988-89 school year.

In the fall of 1988, Mr. Murphy and Timberlane officials had discussions concerning continuation of Kevin's special education beyond his twenty-first birthday on July 9, 1989. Mr. Murphy later signed Kevin's 1988-89 IEP *with the understanding that Kevin would be provided special educational services beyond age twenty-one.* On January 5, 1989, however, the Timberlane school board rejected a request by

> the Timberlane superintendent to fund continued special education for Kevin. On July 24, 1989, shortly after Kevin's twenty-first birthday, George Wright, Timberlane's representative on Kevin's IEP team, notified the Murphys that Kevin would be discharged as a special education student. . . . In August 1989, less than one month after Kevin had been discharged, the Murphys requested an administrative hearing.

PA 69-70 (footnotes omitted) (emphasis added).[4]

During the two-year period in which Kevin remained out of school and without any educational services, his parents attempted to work with the school district rather than initiating an impartial due process hearing. The United States Court of Appeals for the First Circuit stated in its first opinion:

> The Murphys attended no less than six meetings between January and September 1982. Further, although the Pupil Placement Team had not yet agreed on a program for Kevin, the Murphys agreed to allow Kevin to attend school for a short period in June 1982 for the purpose of evaluating Kevin and determining his needs. Obviously, the Murphys were not sitting on their rights, but were attempting to resolve their differences with the school district without resorting to litigation.

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[4] In its first opinion, the Court of Appeals noted that Kevin never received any home based tutorial services during the two year period in dispute despite authorization for such services from the superintendent of the school in January of 1982 and a strong recommendation that such services be provided by the state department of education one year later. *Murphy v. Timberlane Regional School District*, 973 F.2d 13 (1st Cir. 1992) (PA at 64).

PA at 41. The lower courts found that Kevin's parents acted in good faith by deciding to negotiate with the school district rather than to litigate.[5]

During the two year period that Kevin was out of school and without any educational services, the School District was responsible for providing Kevin with a free and appropriate education. That responsibility included an obligation to request an impartial due process proceeding if necessary to assure Kevin's access to appropriate services. The school district refused to abide by that duty.[6]

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[5] The Petitioner suggests in its brief that its failure to provide educational services to young Kevin should be excused because Kevin's parents were less than fully cooperative. This argument is an indirect attack on the lower court's award of compensatory education and is not relevant to its request for a four year statute of limitations.

Moreover, Petitioner's allegations of parental misconduct have been rejected by both the district court and the appellate court. In upholding summary judgment for Kevin, the Court of Appeals stated, in relevant part:

> Timberlane presented no evidence suggesting anything more than that Mr. Murphy was a tenacious and zealous advocate for his son's interests. . . . [A]lthough Timberlane's pleadings are replete with allegations that Mr. Murphy was intransigent, "[b]rash conjecture, coupled with the hope that something concrete will materialize, is insufficient to block summary judgment."

PA at 88 n.14 (quoting *Dow v. United Broth. of Carpenters*, 1 F.3d 56, 58 (1st Cir. 1993)).

[6] In a memorandum to the administrative hearing officer, the School District explained one of its reasons for failing to initiate a due process hearing during the 1981-84 time period:

The Court of Appeals for the First Circuit found that the refusal of the school district to take affirmative action to provide an education to Kevin deprived him of his rights under the Act:

> Under section 1125, the school district must take the initiative to ensure that intransigence and foot-dragging in the IEP process, whether bureaucratic or parental, do not indefinitely compromise the child's right to a free and appropriate public education. . . . [B]y its long-standing procedural lapse in failing to initiate administrative review as required under section 1125, Timberlane abdicated its responsibility to terminate the IEP impasse preventing Kevin's access to a free and appropriate education. We think a procedural default which permits a disabled child's entitlement to a free and appropriate education to go unmet for two years constitutes sufficient ground for liability under the IDEA.

PA 86-88.

"Mr. Murphy would have obtained an unfair tactical advantage if the school district initiated such an administrative hearing." PA at 11. The Hearing Officer responded to the School District's tactical decision-making as follows:

> The undersigned is appalled at this particular assertion which, while understandable from a tactician's point of view, completely ignores the district's legal and ethical obligation to act in the best interest of the student. To assert this . . . as a valid reason not to seek a due process hearing, when a district believed its proposed program was in the student's best interest, shows more chutzpa than sense of obligation.

Id.

C. The Proceedings Below

Kevin filed his request for due process challenging his discharge from special education in August of 1989, less than one month after the actual discharge. PA 70. The School District contested the timeliness of the action at the administrative prehearing, arguing that both the local statute of limitations and the equitable doctrine of laches barred Kevin's case. In his initial ruling, the administrative hearing officer found Kevin's action timely. The hearing officer applied the six year New Hampshire statute of limitations for personal actions, *see* New Hampshire R.S.A. 508:4 (PA 104), and held that the request for due process was "perfected within the deadline of the cited statute of limitations." PA at 7. He rejected Petitioner's laches defense, finding that "the district's failure to request a due process hearing to vindicate its decisions concerning the student in 1982 amounted to 'unclean hands.' " PA at 6-7. Upon Petitioner's motion for reconsideration, the hearing officer reversed himself and found Kevin's action barred by the equitable doctrine of laches. PA 10. The hearing officer dismissed Kevin's action without a hearing on the merits.

Kevin appealed the decision of the hearing officer to the United States District Court for the District of New Hampshire. The timeliness of his appeal is not challenged. PA 77. In its first opinion, the district court granted Petitioner's motion for summary judgment, holding that laches barred Kevin's action due to his unreasonable delay in filing a request for a due process hearing. The First Circuit vacated and remanded that decision, because "the parents' delay in filing suit was not unreasonable and factual disputes remain concerning the

school district's claim of prejudice." *Murphy*, 973 F.2d 13 (PA at 36).

On remand, the district court held an evidentiary hearing to assess the issue of prejudice. After the hearing, the court granted Kevin's motion for summary judgment and awarded him two years of compensatory education to remedy the violation of his rights under the IDEA. *Murphy v. Timberlane Regional School District*, 819 F. Supp. 1127 (D.N.H. 1993) (PA 47). The court of appeals affirmed the order of the district court. PA 91. The School District's petition for writ of certiorari ensued.

REASONS FOR DENYING THE WRIT

This Court should deny *certiorari* for two reasons. First, the choice of a six year statute of limitations for personal actions rather than a four year statute of limitations for claims of bodily injury, personal injury or property damage against governmental units does not raise an issue of federal importance. Nor does the decision by the Court of Appeals to apply the six year limitations period for personal actions effect a significant number of cases. The statute in question has been amended such that all cases involving personal actions which arise in New Hampshire subsequent to July of 1986 are subject to a three year statute of limitations. In effect, the Petitioner seeks to avoid the judgment in this case by asking for the adoption of a limitations period which is actually longer than the period which would be applied to cases arising after July of 1986 under the rationale of the court below.

Second, no actual conflict exists between the decision below and any decision by this Court or any other circuit

court of appeals. The First Circuit is the *only* court of appeals to have addressed the appropriate statute of limitations to apply to a request for a due process hearing under the IDEA.

I. THE PETITION DOES NOT RAISE AN IMPORTANT, UNSETTLED ISSUE OF FEDERAL LAW

The sole issue presented by Petitioner for review by this Court is whether the Court of Appeals for the First Circuit erred by finding Kevin's action timely under a six year New Hampshire statute of limitations for personal actions. Respondent respectfully submits that the decision by the Court of Appeals regarding the choice of an appropriate local limitations period does not raise an important issue of federal law. The decision is limited to the unique facts of the case and has limited impact on the assessment of the timeliness of other actions under the IDEA. Moreover, the specific statute of limitations objected to by the Petitioner has been amended, rendering the number of cases subject to the six year statute negligible.

In enacting the IDEA, Congress did not establish a time limitation for asserting a cause of action under the statute. This Court has held that, when a federal statute does not supply an express limitations period, courts may consider adoption of an analogous or appropriate state limitations period. *See Wilson v. Garcia*, 471 U.S. 261.[7]

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[7] This Court has held that in cases where application of a state limitations period would be inconsistent with or undermine the policies underlying the federal law, courts should look to federal law for rules of timeliness. *See Wilson v. Garcia*, 471

The choice of an appropriate state limitations period requires "the borrowing court to balance both the interests of the parties and the legislative goals of the particular federal statute." PA 74. *See also Janzen v. Knox County Bd. of Educ.*, 790 F.2d 484, 487 (6th Cir. 1986) ("The individual case must be characterized by considering the facts, the circumstances, the posture of the case and the legal theories presented.")

In this case, the Court of Appeals noted the unique procedural posture of the case. It stated: "The peculiar procedural warp presented in this case seems to us sufficiently important to qualify as a defining feature of the limitation to be borrowed from New Hampshire law." PA

U.S. at 266-67; *and DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983).

In its opinion, the trial court found that the application of a statute of limitations to bar young Kevin's claim under the IDEA would "exert an effect contrary to the design and purposes of the federal statute at issue." *Murphy*, 819 F. Supp. 1127 (PA at 55). The court noted that if the School District had complied with Rule Ed. 1125.01(b)(3)-b, a procedural safeguard promulgated pursuant to the IDEA, it would itself have initiated the very administrative and judicial review process it now seeks to curtail summarily by invoking the statute of limitations. *Id.* at 51. The court characterized the defendant's actions as an "attempt to capitalize upon its own failure to comply with the Act." *Id.* at 52. In rejecting that attempt, the court held that the timeliness of young Kevin's filing should be adjudged solely by reference to the equitable doctrine of laches: a doctrine which allows for a consideration of the defendant's misconduct as it relates to any delay in filing.

The Court of Appeals affirmed the decision of the district court on independent grounds, holding that "the compensatory education claim was not time-barred under the New Hampshire limitation provision appropriate for 'borrowing.' " PA 74.

76. The court listed the following unique aspects of the instant case: (1) the school district challenged not the timing of an appeal to federal court but the initial request for an administrative hearing; (2) Kevin's complaint contests not the appropriateness of a long concluded course of education but rather the complete denial of any educational services whatsoever; and (3) application of the statute of limitations would preclude not the judicial review of an administrative decision on the merits, but it would "foreclose *any ruling, administrative or judicial,* on Timberlane's legal responsibility for the otherwise irretrievable two-year IDEA educational entitlement denied Kevin." PA 78 (emphasis in original).

The uniqueness of the instant case is indicated by the absence of any other reported cases deciding the appropriate limitations period to apply to an initial request for due process. PA 83. The Court of Appeals noted in its decision that most IDEA cases which address the timeliness of actions under the Act involve the timing of an appeal from an administrative due process proceeding. PA 83. The First Circuit indicated that only one other reported case was "even roughly analogous to the Murphy claim." *Id.* And that case involved not the initial filing of a request for due process but the filing of a complaint in federal court six years after the plaintiff attained the age of twenty-one. *Id.* The lack of reported decisions in other jurisdictions on the issue of when an initial request for due process must be filed belies the contention of the Petitioner that this is an issue of broad effect.

The petition filed by the School District is an invitation to this Court to grant certiorari for the sole purpose of determining whether a four or six year statute of

limitation should have been applied by the court below. *See* Petition at 19 ("When determining which state statute is more analogous, the primary issue is which period of time – four or six years – is more appropriate for claims arising under the IDEA.") The School District argues that the court below should have applied the four year statute of limitations contained in the New Hampshire statute limiting the liability of local governmental units for bodily injury, personal injury or property damage, *see* R.S.A. 507-B:7 (PA 103), because the shorter statute is more consistent with the policies underlying the IDEA. The Court of Appeals rejected that argument, noting that the statute advocated for by the Petitioner was enacted to limit municipal liability and thus did not meet the "like action" test of *Campbell v. Haverill*, 155 U.S. 610, 616 (1895). PA 79 (*citing Cannata v. Deerfield*, 566 A.2d 162, 167 (N.H. 1989)). The Court of Appeals adopted instead the six-year limitations period for personal actions set forth in New Hampshire R.S.A. 508:4(I) (PA 104).

The decision of the Court of Appeals has a limited effect due to the amendment by the New Hampshire legislature of the statute of limitations for personal actions. Under that amendment, a three-year rather than a six-year limitations period now applies to all cases arising after July 1, 1986. *See* 1986 N.H. Laws 227:12. The six-year period applied by the First Circuit and contested by the Petitioner will effect only those IDEA cases arising in New Hampshire before July of 1986. Thus the ruling of

the Court of Appeals will not affect a significant number of cases.[8]

II. THERE ARE NO CONFLICTS WHICH WARRANT THE GRANTING OF THE PETITION.

Petitioner has not shown that there is a conflict among the various United States circuit courts of appeals or between this Court and the decision below. Neither this Court nor any court of appeals other than the First Circuit has addressed the specific issue of the appropriate limitations period to apply to an initial request for due process under the IDEA. A conflict cannot exist on an issue of first impression. Moreover, to the extent that various circuit courts of appeals have considered issues of timeliness under the IDEA, the appellate courts are in accord that the federal concerns embodied in the IDEA are not furthered if unduly short time limits deprive children with disabilities of their rights under the statute.

Petitioner's assertion of conflict between the circuit courts of appeals is unfounded. The First Circuit found that there are no reported federal appellate cases which address the appropriate limitations period to apply to a request for a due process hearing. PA 83. Each of the decisions cited by the School District concerns either the

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[8] The holding of this case may be further limited by the more recent passage by the New Hampshire legislature of R.S.A. 186-C:16-b which establishes local time limitations for the filing of special education actions. Respondent notes that the statutory time limits have not yet been challenged in federal court.

limitations period for the judicial review of an administrative decision or the limitations period for an action in federal court. The First Circuit distinguished on its facts the one case which it found to be "even roughly analogous to the Murphy claim." PA 83.

Petitioner has suggested that the First Circuit created a conflict between the circuit courts of appeal by considering the facts of this case as a part of its determination of the appropriate limitations period. That claim is without merit. Under the "borrowing" methodology of *Wilson v. Garcia*, 471 U.S. 261, it is necessary for a federal court to consider the character of the claim and the federal concerns underlying the statute in order to identify the most appropriate or most analogous state statute of limitations. *Id.* at 267-68. Both this Court and other circuit courts have noted that the IDEA is a child centered statute which creates specific procedural and substantive rights. *See, e.g., Jefferson County Bd. of Educ. v. Breen*, 853 F.2d 853, 856 (11th Cir. 1988) ("In addition to a loss of federal assistance, a state which fails to comply with the Act may be subject to civil liability because the 'Act establishes an enforceable substantive right to a free appropriate public education . . . [and] establishes an elaborate procedural mechanism to protect the rights of handicapped children.' ") (*quoting Smith v. Robinson*, 468 U.S. at 1010-1011). *See also Florence County School District v. Carter*, 114 S.Ct. 361, 365 (1993) ("IDEA was intended to ensure that children with disabilities receive an education that is both appropriate and free.") Numerous courts have cited the protective purpose of the Act in ruling that case specific equitable considerations *should* inform the application of a statute of limitations. *See, e.g., Janzen v. Knox County*

Board of Education, 790 F.2d at 487 ("[T]he nature of actions that can be brought under the Act as well as the Act's goal of proper education of the handicapped child make the selection of state limitations periods on a case-by-case basis an imperative. The individual case must be characterized by considering the facts, the circumstances, the posture of the case and the legal theories presented."); *and Department of Education v. Carl D.*, 695 F.2d 1154, 1158 (9th Cir. 1983) ("equitable considerations might militate against the rigid enforcement of a . . . limitation period.")

In this case, the Court of Appeals considered the remedial nature of the statute and the unique procedural and equitable considerations of the case prior to adopting a local limitations period. The court noted that the School District failed to comply with the procedural requirements of the IDEA. The court noted that, in light of the IDEA's reliance upon procedure as a mechanism to protect substantive rights, the procedural violations of the school district struck at the core of the IDEA. *Cf. Board of Education v. Rowley*, 458 U.S. at 205-06 ("It seems to us no exaggeration to say that congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation . . . as it did upon the measurement of the resulting IEP against a substantive standard.") And the court noted that the School District was attempting to profit from its own misconduct by raising the defense of timeliness when prompt action on its own part, as mandated by the law, would have eliminated any timeliness issues. Such

consideration of equitable factors is consistent with the decisions of other circuits as cited above.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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